

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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L.E.B. ELECTRIC LTD.,

Plaintiff,

-against-

KINETICS INDUSTRIES INC.,

Defendant.
-----X

Docket No.: 1:21-cv-10319

NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK:**

Defendant, Kinetics Industries, Inc. i/s/h as Kinetics Industries Inc. (“Kinetics Industries”) by and through their attorneys, Haworth Barber & Gerstman, LLC, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby files this Notice of Removal of this civil action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about October 27, 2021 plaintiff L.E.B. Electric Ltd., commenced an action against defendant Kinetics Industries Inc. by the filing of a Summons with Notice in New York State Supreme Court, New York County.¹ The suit is identified in the Supreme Court as L.E.B. Electric Ltd. v. Kinetics Industries Inc., bearing Index No.: 159781/2021. See Summons with Notice, attached as **Exhibit “A.”**

2. Defendants became aware that there is complete diversity of citizenship among the parties at the time it became aware of the within lawsuit via receipt of service of the Summons with Notice on November 9, 2021, which was its first notice of this action. The filing of this

¹ We note that although the Summons with Notice was filed on October 27, 2021, as indicated by the stamps on the documents, the filing was not received by New York State Courts Electronic Filing (“NYSCEF”) until November 4, 2021. See Ex. “A.”

Notice of Removal is timely because it is made within thirty days of the date on which defendants first received notice that this action is removable on the basis of diversity jurisdiction under 28 U.S.C. §§ 1332 and 1441(a).

3. It is well established that a corporation is a citizen of the state in which it is incorporated and the state where its principal place of business or “nerve center” is located. See 28 U.S.C. § 1332(c)(1); Johnson v. SmithKline Beecham Corp., 853 F. Supp. 2d 487, 490 (E.D. Pa. 2012), aff’d, 724 F.3d 337 (3d Cir. 2013).

4. Based on a New York State Department of State Division of Corporations Entity Search (New York State Secretary of State Entity Search), plaintiff is a domestic business corporation with a principal place of business located at 85 Ralph Avenue, Copiague New York, 11726 for purposes of 28 U.S.C. § 1332. See Exhibit “B.”

5. Kinetics Industries is a corporation duly organized under the laws of the State of New Jersey. It maintains a principal place of business at 140 Stokes Avenue in Trenton, New Jersey for purposes of 28 U.S.C. § 1332.

6. This is a civil action for property damage. The Summons with Notice states that plaintiff’s damages are expected to exceed the sum of \$200,000. This satisfies the \$75,000 amount in controversy threshold under 28 U.S.C. § 1446(b)(3). See Plaintiff’s Summons with Notice **Exhibit “A.”**

7. Based on the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) based on diversity of citizenship.

8. The removal statute now embodied in section 28 of the Judicial Code (U.S. Code, tit. 28, § 71 [28 USCA § 71]), providing for removal from the state court to the District Court, authorizes removal at the request of the defendant in all cases in which the District Court has

jurisdiction. See Tilly v. Nat'l. City Bank of New York, 149 Misc. 519, 521, 267 N.Y.S. 667, 669 (Sup. Ct. 1933).

9. Accordingly, as defendant Kinetics Industries for removal purposes is a resident of the State of New Jersey and plaintiff for removal purposes is a resident of the State of New York, this action is properly removable to this Court pursuant to 28 U.S.C. § 1441(a) and Local Civil Rule 81.1.

10. Additionally, pursuant to 28 U.S.C. § 1446(a) and (d) defendant has served a copy of this Notice of Removal upon all parties, and has filed a copy of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, New York County.

11. Attached to this Notice of Removal is a copy of all records and proceedings in the state court from which this case is to be removed. To date, only the Summons with Notice has been filed. See Exhibit "A".

WHEREFORE, defendant respectfully requests that the action pending in the Supreme Court of the State of New York, New York County, bearing Index No. 159781/2021, be removed therefrom to this Court.

Dated: New York, New York
December 3, 2020

HAWORTH BARBER & GERSTMAN, LLC

/s/ Chauncey Gibson
Chauncey Gibson (CG-1786)
80 Broadway, 24th Floor
New York, New York 10004
Telephone: (212) 952-1100
Facsimile: (212) 952-1110
Chauncey.Gibson@hbandglaw.com
Attorneys for Defendant
Kinetics Industries, Inc., i/s/h as
Kinetics Industries Inc.

TO: *All counsel of record via ECF*